Supreme Court of the United States

October Term 1950

Misc. No. 699

ATLANTIC COAST LINE RAILROAD COMPANY, PETITIONER,

v.

WILLIAM C. CHANCE, RESPONDENT.

RESPONDENT'S BRIEF IN OPPOSITION TO THE GRANTING OF A WRIT OF CERTIORARI

Respondent, William C. Chance, files this brief in opposition to the granting of a writ of certiorari sought by the Atlantic Coast Line Railroad Company to the judgment of the United States Court of Appeals for the Fourth Circuit entered herein on January 27, 1951.

PRELIMINARY STATEMENT

The facts as set out in petitioner's "Summary Statement of the Matter Involved" are substantially correct.

reference to it was made, the implication is that it was approved, for in the *Morgan Case* this Court took especial pains to point out in a footnote

> "When passing upon a rule of a carrier that required segregation of an interstate passenger, this Court said 'and we must keep in mind that we are not dealing with the law of a State attempting a regulation of interstate commerce beyond its power to make'. *Chiles* v. *C. & O. R. Co.*".

So far as we are aware the first court to question the full and complete right of a railroad company to adopt such a rule and regulation as is here involved was the Circuit Court of Appeals for the Sixth Circuit in *Whiteside* v. *So. Bus Lines, Inc.*, 177 Fed. 2d 949, decided in 1949. There a bus company had such a regulation as is here involved and enforced it against an interstate colored passenger. That Court expressly said that if *Chiles* v. *C. & O. R. Co., supra,* were to be destroyed, "it may not be by us".

But it likewise held, among other things, that such a rule and regulation by a carrier had exactly the same effect as did a State statute, and that if a State statute was a "burden upon commerce", then a regulation of the carrier "enforced by it under the asserted sanction or compulsion of Kentucky law" was a burden on commerce and void.

In that case the Circuit Court said that the carrier defended its regulation not only upon the ground of local custom, but of applicable Kentucky law.

This is the case referred to and relied upon by the Court of Appeals for the Fourth Circuit in its opinion in the instant case. But here the Court of Appeals for the Fourth Circuit went a step further. The defense here is based *solely* upon the reasonable rule and regulation of the carrier, and

the Court held that that rule and regulation imposed a burden upon interstate commerce and hence was void.

We have this very highly anomalous situation. This Court has held that a State statute *requiring* such segregation and that a State statute *forbidding* such segregation are equally vicious. In each instance the statute is an attempt by the State Legislature to impose a direct burden upon commerce and to interfere directly with its freedom and encroaches upon the exclusive power of Congress and is, therefore, unconstitutional. The test is not whether segregation is required by the statute, or whether it is forbidden by the statute; but the test is whether the State is attempting to burden commerce and interfere with its freedom. Now the Court of Appeals for the Fourth Circuit has said that if by rule and regulation of a private person, to-wit, a railroad company, segregation is required, that rule and regulation is just as vicious as is a State statute which would require separation. Since the vice is not in the fact that separation is required, but is in the fact that an attempt to burden and interefere with commerce is being made, a rule, regulation or enforced practice prohibiting segregation would have the identical vice that is possessed by a State statute prohibiting segregation. How, may we ask, if this be sound law, are passengers of different races to be seated? To seat them together is illegal because it interferes with the exclusive powers of Congress to regulate; and to seat them separately is illegal because it interferes with the exclusive power of Congress to regulate. To state such a proposition is to answer it.

The fact of the matter is that this argument that such a rule of the carrier as is here involved is an attempt by it to accomplish the same result that would be accomplished by State legislation requiring separation, is to miss the point. It assumes that the separation of passengers on racial grounds has been held to be unlawful under any and under

all circumstances. Such has not been held. It is only where there is separation without equal accommodations that such separation is invalid, and then not because of the Commerce Clause of the Constitution, but because of the provisions of the 14th Amendment and those provisions of the Interstate Commerce Act which prohibit discrimination (see *Mitchell* v. *U. S.*, 313 U. S. 80—the Pullman car case,—and *Henderson* v. *U. S.*, 339 U. S. 816—the dining car case). It fails to recognize the distinction between action of a State in attempting to regulate the business of a carrier with respect to matters which under the Constitution are the sole concern of Congress, and the right of the carrier to operate its own business subject to such regulations, if any, as the Congress may have imposed. Many aspects of interstate transportation might be dealt with by Congress which have been left by it subject to the rules and practices of the carriers themselves. The fact that Congress has refrained from acting in a field exclusively entrusted to it, does not empower the States to step into that field, but it does permit the carriers by their rule and regulation to determine how they will operate within that field until Congress lays down the rule.

The view of the Court of Appeals also overlooks another factor. As was pointed out in *Hall* v. *DeCuir, supra,* a carrier must of necessity have the right to promulgate uniform regulations over its whole route or certainly large and substantial portions of it. Here the regulation is a regulation governing the whole of the Coast Line system, operating from Richmond, Va., down into Florida, and out into Alabama. The then Chief Justice pointed out the confusion that would arise should different and varying State legislative requirements be applicable.

We believe that the real error both in the *Whiteside Case* and in the decision of the Court of Appeals in the instant

case lies in a misuse of that oft-used expression "burden on commerce".

This Court was careful to point out in *Morgan* v. *Virginia, supra,* that "Burdens upon commerce are those *actions of the State* which directly impair the facilities of interstate traffic * * *." (Italics supplied.) We need not go into establishment of the fact that no cause so contributed to the holding of the Convention of 1787 as conflicting and hostile actions of the several States concerning matters of commerce between the States, and that indeed the Annapolis meeting of the year before, out of which the Constitutional Convention developed, had been called to search for means and methods of freeing the country from the confusion into which these restrictive and hostile regulations had thrown it. The exclusive power to regulate commerce given by the Constitution to the Congress arose by virtue of these conditions then prevailing in interstate commerce and in somewhat similar regulations in the field of foreign commerce. Hence, this Court has always recognized that the action which is referred to as a "burden on commerce" was State legislation. That declaration by this Court in *Morgan* v. *Virginia, supra,* was nothing new (see *Sherlock* v. *Alling,* 93 U. S. 99, by way of example). Indeed prior to the *Whiteside Case,* we have been able to find no indication that there can be such a thing as an unconstitutional "burden on commerce" *imposed by private parties,* and apart from Congressional legislation.

If there be within the provisions of our constitution anything which would warrant such a view, our courts have heretofore been blind to it. We need not cite the history which gave rise to the enactment of the Sherman Anti-Trust Law. Sufficient is it to say that Congress reached the conclusion that combinations and agreements in restraint of trade interfered with and burdened commerce and enacted

legislation placing such agreements outside the pale of law. Congress having acted, such combinations and agreements became invalid. This Court said in *Addyston Pipe and Steel Co.* v. *U. S.*, 175 U. S. 211:

> "The power to regulate such commerce, that is, the power to prescribe rules by which it shall be governed, is vested in Congress and *when Congress has enacted a statute such as the one in question,* any agreement or combination which * * * thereby regulates interstate commerce to *that* extent, and to the *same* extent trenches upon the power of the national legislature and violates the statute." (Italics supplied.)

We submit that prior to the Sherman Anti-Trust Act such combinations and agreements as have since been held to be violative of that Act and illegal, could not have been held to be violative of any provision of the Federal Constitution. Some of them might have been illegal monopolies under state law, but as long as the Congress was silent they could not have been held to be "burdens on commerce" and violative of the Commerce Clause of the Federal Constitution. Congressional legislation was required—Congress had to exercise its power, and it had to declare such agreements to be illegal before they could be dealt with as Federal matters. This Court could not have supplied the designation of illegality because the power to regulate commerce rests in the Congress and not in Courts.

We cite one other pertinent example. It may be that prior to the adoption of the National Labor Relations Act a company might have adopted the policy of declining to deal with a Union representing a majority of its employees, or might have entered into an agreement with other companies that it would not deal with such a Union. Such a policy or an agreement would have been entirely different from State

legislation prohibiting employers from dealing with Unions. The latter might perhaps under the Commerce Clause have been held to be an interference with Commerce, but until Congress had declared itself and had adopted the National Labor Relations Act the former could not have been questioned in law.

It is the Congress which has the exclusive power to regulate commerce, and it is the function of the Courts to preserve that power and protect it from efforts by other governments to interfere therewith. But private parties conducting the commerce,—the carrier actually furnishing the facilities,—may adopt such reasonable rules as it sees fit until the Congress sees fit to lay down a national policy.

CONCLUSION

It is accordingly submitted that a writ of certiorari should be granted petitioner and that this Court should review the decision of the Court of Appeals for the Fourth Circuit and reverse the same and remand the case to it with the directions for which prayer is made in the accompanying petition.

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However, while it is true that the train upon which respondent was a passenger was operated by the Richmond, Fredericksburg & Potomac Railway Company with its locomotive and employees from Washington to Richmond, and by the petitioner railroad company from Richmond to Rocky Mount, North Carolina, the passengers, including respondent, who boarded the train in Washington were entitled to ride that train without transfer or interruption of their journey to their destination. So far as the passengers were concerned, it was one continuous journey from Washington to Rocky Mount and other points farther south. No interruption was made of the passenger's journey in Richmond other than the necessary delay while the locomotive and employees were being changed, except the additional delay, interruption, hindrance and discomfort occasioned by petitioner railroad company requiring all through passengers to be moved to another coach or another part of the train solely because of their race and color, even though such passengers were traveling in interstate commerce, when such passengers happened to be in a coach which was assigned by the rules and regulations of the company to passengers of another race. In this particular case, this respondent was first assigned to the coach in which he was riding by railroad employees and was later repeatedly requested to move to another coach by agents of petitioner solely because of his race.

The warrant under which respondent was arrested showed on its face that it was obtained and sworn to by the conductor, an employee of the railroad company, and, subsequently at his instance and request, it was dismissed.

OPINION BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is reported in 186 Fed (2d) 879 and set out on pages 179-186 of the record as stated in the petition.

JURISDICTION

The jurisdiction of this Court under Section 1254, paragraph (1) of Title 28, United States Code, is conceded.

REASONS WHY THE WRIT SHOULD NOT BE GRANTED.

A.

The brief of respondent (appellant and cross-appellee in the Court of Appeals), which was filed herein in the United States Court of Appeals, is set out on pages 1-25 of the record in this Court. In both the District Court and United States Court of Appeals for the Fourth Circuit respondent contended that the rules and regulations of the carrier were invalid because (1) they constituted a burden on Interstate Commerce, (2) they violated the Fifth and Fourteenth Amendments to the Constitution, the public policy and laws of the United States, and (3) they were unreasonable. Respondent's brief in support of these contentions has been printed and set forth on pages 1-25 of the record of this case filed in this Court. The Court of Appeals only found it necessary to consider the first of these propositions. Respondent submits that the Court of Appeals was clearly right.

A common carrier under the law has a right to make and enforce such rules and regulations as are applicable alike to all members of the traveling public. An interstate traveler has the right and privilege of being treated as an individual subject only to such rules and regulations as are applicable to all other members of the traveling public. Any rule or regulation which violates this cardinal principal and subjects an interstate passenger to different treatment because of some arbitrary classification whether enacted and enforced pursuant to a state law or pursuant to some custom or practice constitutes a burden on interstate commerce.

B.

Petitioner relies solely upon its rules and regulations, and the reasonableness thereof, as grounds for the ejection of respondent. It disclaims any reliance upon state law. It therefore asserts that *Morgan* v. *Virginia*, 328 U. S. 373, and subsequent cases have no application. However, the record shows that petitioner has always relied upon the state authorities and its laws for enforcement of its rules and regulations. In this particular case, the agents of petitioner called police officers to meet the train when it arrived in Emporia. At its instance and request these police officers boarded the train and participated in the ejection of respondent. As a result of these actions, a warrant was procured for respondent's arrest and he was arrested and incarcerated. Petitioner now also attempts to disclaim responsibility for such arrest and detention.

This same disclaimer was made by the Southern Railway System in *Matthews* v. *Southern Railway System*,

157 Fed (2d) 609. In that case the United States Court of Appeals for the District of Columbia, in overruling such contention, stated, that

> "A common carrier is required to protect its passengers against assault and interference with the peaceful completion of their journey. But an exception to the general rule is that an agent of the carrier is not required to interfere with a known officer of the law apparently engaged in the performance of his duty. * * * But the exception goes no further. It does not cover the action of the agent in otherwise causing, procuring, assisting in, or participating in the arrest or ejection, or where the arrest is at the instance of the agent. In other words, there is a clear line between the action of an agent of a carrier in merely notifying the police of a violation of law or identifying persons at the request of a police officer, and his action in going beyond mere notification or identification and by some additional act procuring, causing, directing, or participating in an arrest or ejection. Liability in the latter cases rest upon joint tort-feasance or breach of contract, and not upon agency."

C.

In the three cases that have come before this Court in modern times the rule has been clearly enunciated that in interstate travel passengers on common carriers have a right to be treated as individuals, subject only to rules and regulations applicable to all of the traveling public, and such passengers are entitled to uniformity of traveling conditions. *Mitchell* v. *United States*, 313 U. S. 80; *Morgan* v. *Virginia*, 328 U. S. 373, and *Henderson* v. *United States*, 339 U. S. 816.

As was stated by Judge Soper in this case, in referring to the *Mitchell* and *Henderson* cases, "In the last mentioned cases the Court did not reach certain constitutional questions suggested by the complainant, but in all the cases, whether the decision was based upon a violation of a provision of the Constitution or of a statute of the United States, the problem under consideration was the standard of conduct to be observed by interstate carriers in dealing with members of the traveling public. Moreover, the ill effect upon the passengers and the disturbance of interstate traffic were much the same whether the carrier's conduct was treated technically as a denial of equal privileges to the races or as a burden upon interstate commerce." (Record, p. 184)

Thus, three United States Courts of Appeals—two of them unanimously, within the past two years—have recently held that actions of transportation companies, similar to those engaged in by the petitioner in this case, contravene the rights of colored citizens who were traveling upon common carriers in interstate commerce.

Chance v. *Atlantic Coast Line Railroad Company*, 186 Fed (2d) 879.

Whiteside v. *Southern Bus Lines, Inc.*, 177 Fed (2d) 949.

Matthews v. *Southern Railway System, supra.*

No Court has recently held to the contrary. No State or Federal law gives sanction to such actions. There is no important Federal question raised which has not already been clearly decided by unanimous holdings of various United States Courts of Appeals since the decision of this Court in *Morgan* v. *Virginia, supra.*

It is therefore respectfully submitted that the writ of certiorari should be denied.

Respectfully submitted,

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